

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Lempert Analyst: Gloria McConnell Bill Number: AB 2371
Related Bills: See Legislative History Telephone: 845-4336 Introduced Date: 02/24/00
Attorney: Patrick Kusiak Sponsor: BD of Control

SUBJECT: Board of Control/FTB Collection of Restitution Fines/Court Ordered Debt Pilot Collection Program

SUMMARY

Under this bill:

1. Any portion of a restitution fine unsatisfied after a person is no longer on probation or parole would be expressly enforceable by the Board of Control (BOC).
2. State agencies, including the Franchise Tax Board (FTB), would be required to provide the BOC with any information requested to assist in collection of unsatisfied restitution fines.
3. The dollar threshold for restitution fines and restitution orders that may be referred to the FTB under the court-ordered debt collection (COD) program would be lowered from \$250 to \$100.
4. Restitution fine amounts collected by FTB would be deposited in the Court Collection Account and transferred by the Controller from the Court Collection Account to the BOC, less an amount equal to FTB's costs in administering the COD collection program. The BOC would deposit the transferred funds into the Restitution Fund. If the amount collected by FTB were insufficient to satisfy an individual's restitution fine and other CODs, the amount collected by FTB would be allocated for distribution on a pro rata basis after covering FTB's costs.
5. FTB's administrative costs for the collection of restitution fines on behalf of BOC would be determined through contractual agreement between the FTB and BOC.
6. The January 1, 2002, sunset date for the COD pilot program would be removed.

EFFECTIVE DATE

This bill would be effective and operative on January 1, 2001.

LEGISLATIVE HISTORY

See below.

PROGRAM HISTORY/BACKGROUND

In the early 1990s, FTB's tax collection responsibilities were expanded to include delinquent child support. Shortly thereafter, FTB's collection responsibilities were again expanded to include delinquent vehicle registration license fees. AB 3343 (Chapter 1242, Statutes of 1994) again expanded FTB's collection responsibilities by requiring FTB to implement a pilot program for the collection of certain CODs. A report to the Legislature would have been due by April 1, 1998, and the pilot program would have sunset December 31, 1998.

Board Position:

<u> </u> S	<u> </u> NA	<u> </u> NP
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<u> </u> N	<u> </u> OUA	<u> X </u> PENDING

Department Director

Date

Gerald H. Goldberg

4/19/00

AB 3343 provided that it was the Legislature's intent that for the first two fiscal years (1995-96 and 1996-97) of the pilot project, FTB costs to administer the COD pilot collection program were not to exceed 9% of the amount it collected, but the following year, and thereafter, the cap on FTB's administrative costs was to decrease to 5%.

SB 1106 (Chapter 604, Statutes of 1997) subsequently increased the 5% cap on administrative cost to 15% of the amounts collected. In addition, SB 1106 expanded the types of debts that could be referred to FTB's COD collection program to include restitution orders referred by government entities, which include BOC, extended to April 1, 2001, the date the COD pilot collection program report is due to the Legislature, and extended to January 1, 2002, the sunset date for the COD pilot collection program.

The COD pilot program began in 1995 with 36 courts in seven counties. Currently, the COD pilot program provides collection services for 98 courts in 17 counties. There are approximately 260,000 COD accounts in FTB's inventory, of which approximately 2,000 accounts are restitution fines referred by BOC. As of December 31, 1999, FTB's COD program has collected close to \$24 million for the various participating clients.

To accommodate FTB's COD system and storage capacity and keep FTB's costs within 15% of its collections (15% cap), the participating counties/courts refer to FTB only a portion of their accounts and retain the remainder. FTB staff anticipates that the number of COD accounts in FTB's inventory will reach more than 500,000 by the end of the pilot. From the number of accounts in the current COD pilot program, staff estimates that the number of COD accounts in the counties/courts inventory may well exceed 2 million.

During fiscal year 1998/99, BOC requested that FTB staff increase the number of accounts that can be referred by BOC to allow for approximately 150,000 additional BOC restitution fine accounts annually. However, the following obstacles exist:

- ⌚ the majority of these BOC accounts are under the statutory \$250 threshold for referral to FTB for the COD collection program; and
- ⌚ FTB's COD program was implemented as a pilot program and has reached its allocated computer storage and system capacity. The increased workload could not be accepted without additional resources for the technology and processing areas and could not be accommodated within the 15% cap on administrative costs, as reflected below by comparing the departmental costs to the collection estimate.

SPECIFIC FINDINGS

State Law

According to BOC staff, during the period that a person is on probation or parole, the counties/courts enforce restitution fines. BOC receives unsatisfied restitution debts from the various counties/courts when the person is released from probation or parole. The restitution for crimes committed may be owed to the state or the victim. BOC is authorized to enforce the restitution fine as though it were a money judgment. Through FTB's existing COD pilot collection program, BOC also may refer the debt to the FTB for collection as though it were a delinquent personal income tax liability.

The following table displays the current law and the changes proposed by this bill:

Current law:	Bill:
For an account to be referred to FTB's COD pilot collection program, a debtor must owe a COD of at least \$250 in the aggregate.	For a restitution fine or restitution order referred to the COD program by the county or state, the debt threshold would be lowered to \$100 in the aggregate.
FTB's collections are deposited into the Court Collection Account and transferred by the Controller, less an amount equal to FTB's COD administrative costs, to the referring county/court for distribution into the proper state and local funds, which may include the Restitution Fund.	Same, except all amounts collected for restitution fines, whether referred by the counties/courts or BOC would be transferred to BOC. BOC would deposit the amounts in the Restitution Fund.
In the event a person owes multiple CODs, a statutory allocation/priority scheme for distribution is outlined for the courts/counties.	In the event a person owes a BOC restitution fine and other COD, FTB would be required to split the collection between the BOC amount and other COD, according to the statutory allocation.
FTB's costs for the COD pilot collection program are determined through the usual budgetary process and cannot exceed 15% of FTB's COD collections.	FTB's costs for the BOC collection program would be determined through contractual agreement between FTB and BOC.
To fund FTB's COD pilot collection program, the amount remaining in the Court Collection Account after the transfers to the appropriate courts/counties, which is equal to FTB's administrative costs, is subsequently transferred by the Controller to the General Fund. FTB recovers its costs from a General Fund appropriation, through the budgetary process.	Same, except there is no provision as to what would happen to that amount that is equal to FTB's administrative costs that would remain in the Court Collection Account.
It is a misdemeanor for FTB to disclose tax information, unless authorized under Article 2 of Chapter 7 of Part 10.2 in the Revenue and Taxation Code.	FTB could be required to disclose to BOC, upon request, all tax information to assist in the collection of unpaid restitution fines owed by persons off probation or parole, potentially subjecting staff to a misdemeanor violation.
The COD pilot collection program is due to sunset December 31, 2001.	FTB's COD collection program would be a permanent, ongoing program.

Federal Law

There is no comparable federal law or program.

Policy Considerations

- ⌚ The removal of the sunset date could be viewed as premature because this bill would make the COD collection a permanent program before FTB's April 1, 2001, report on the COD pilot collection program is due to the Legislature.
- ⌚ Permanency of the COD collection program, in effect, could allow counties/courts to refer millions of CODs to FTB for collection, which would significantly increase FTB's workload and departmental costs beyond that reflected in this analysis. (See further discussion below.)

Implementation Considerations

Preliminary information received from BOC indicates the profile of the debts owed for restitution fines is similar to the current FTB Vehicle Registration Collection (VRC) accounts. Therefore, FTB staff anticipates it could clone FTB's VRC mainframe system and program to collect the restitution fines that would be referred by BOC to FTB under this bill. Staff estimates it would take approximately one year to program and test the system that would be required to implement this bill.

FTB's implementation plan for this bill does not take into consideration the potential impact this bill may have on the total COD program since this bill does not directly require the expansion of that program. Any implementation plans and cost estimates for the potential expansion of the COD program would be developed through the usual budgetary process.

The following issues relative to this bill have been discussed with BOC staff. It was concluded that these issues either were not intended to affect FTB, and the bill would be amended to so clarify, or were not identified as significant issues to the overall proposed legislation so the bill would be amended to eliminate the issue. It, therefore, is suggested that to achieve these results:

1. FTB would not be required to provide tax return information to BOC (and perhaps the victim) for collection purposes as this was not the BOC's intent. See attached Amendment 4.
2. "Restitution orders" would not be subject to the \$100 threshold for referral to FTB, but instead would continue to be collected by FTB subject to the \$250 threshold. Amendments 5 and 6 would continue current processing for restitution orders.
3. The reduction in the dollar threshold for referrals to FTB would be limited to only the BOC referrals of restitution fines. See attached Amendment 7.
4. Only collections attributable to restitution fines referred to FTB by BOC would be transferred directly to BOC. Additionally, FTB would not be required to allocate collections between restitution fines and other CODs. Counties/courts currently do not provide FTB with a breakdown of the type and amount of debt within the total amount due.

Moreover, none of FTB's existing non-tax systems and processes accept such detailed data and none of the non-tax systems and processes give FTB the ability to allocate collections between debts prior to transfer. Amendment 14 removes the language that would require FTB to allocate collections.

5. FTB would transfer all collections attributable to the BOC accounts to the appropriate fund, as agreed by the FTB and the BOC, without holding aside an amount for FTB's departmental costs. FTB's departmental costs for implementing and administering the BOC program authorized under this bill would be reimbursed by BOC as provided for by contractual agreement and would not be subject to the 15% cap otherwise provided in Section 19282(b). See attached Amendments 9 through 14.

Technical Considerations

- ⌚ This bill would require the board of supervisors of the various counties to prioritize "payments" between fines, penalties, etc. (page 3, line 12). It should be clear the prioritization is with respect to FTB collections, but only after amounts collected by FTB have been transferred by the Controller, and is not intended to direct FTB to somehow split the payments it collects by the established priority. See attached Amendments 1 and 2 for clarifying language.
- ⌚ This bill amends Section 1214(a) of the Penal Code (page 3, line 37) to allow these unsatisfied restitution fines to be enforced by the BOC or "any other entity responsible for its collection, pursuant to this section." Unless reference to "other entities" is eliminated, it is not clear that the BOC has exclusive authority to enforce these debts, which could result in both the counties/courts and BOCs collecting the same debt. Attached Amendment 3 would make enforcement exclusive to the BOC.
- ⌚ Current law under this collection program incorrectly uses the word "obligor" to refer to the debtor. "Obligor" is commonly used in child support collection, but "debtor" should be used for the COD/BOC programs. Attached Amendment 8 makes the suggested change.

FISCAL IMPACT

Departmental Costs

FTB staff anticipates that annually FTB staff would take action on the majority of the 150,000 accounts received from BOC, which could include sending notices, initiating collection activities, or responding to inquiries. Also, FTB staff would receive, cashier or otherwise process approximately 140,000 documents annually. Under these assumptions and considering the implementation plan outlined above, staff estimates that the one-time cost for this VRC-cloned program would be approximately \$1 million and the ongoing annual costs are estimated to be approximately \$800,000, as indicated below. Further detail as to the breakdown by fiscal year will be provided as the bill moves through the legislative process.

AB 2371 Cost Estimate (**Exclusive of Costs for Potential Expansion of COD Program**)

	One-time costs	Continuing costs
Technology Staff	11 personnel years @ \$600,000	4.5 personnel years @ \$230,000
Hardware/Software/Contract Services	300,000	0
Facilities/Other-OE&E	190,000	30,000
Program Staff/related costs	0	10 personnel years @ 550,000
Total	\$1,090,000	\$810,000

To implement this bill, FTB anticipates redirecting spending authority from vacancies within the other collection programs, which would decrease the other program costs by approximately \$470,000.

Collection Estimate

Based on the data and assumptions below, this bill would increase the collections of restitution fines by approximately \$1.9 million in fiscal year 2001/02.

Collection Estimate Discussion

The impact of this bill will depend on the number of additional court ordered debts referred to FTB for collection and the average amount of collections for each case.

This estimate is based on the results of FTB's existing non-debt collection programs and assumes that BOC will be able to refer approximately 150,000 additional cases to FTB for collections. Collection estimates were adjusted to reflect the reduction in the dollar amount for restitution fines referred to FTB and the age of the account upon referral. As previously noted, this estimate does not address the impact this bill may have on the COD program as a result of removing the sunset date.

BOARD POSITION

Pending.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 2371
As Introduced 02/24/00

AMENDMENT 1

On page 3, line 11, after "19280" insert:

of the Revenue and Taxation Code and subsequently transferred by the Controller pursuant to Section 19282

AMENDMENT 2

On page 3, line 12, strike out "payment" and insert:

satisfaction by installment payments and transferred amounts

AMENDMENT 2A

On page 3, line 16, strikeout "payment" and insert:

satisfaction

AMENDMENT 3

On page 3, strike out line 37 and insert:

Control

AMENDMENT 4

On page 4, line 6, after "cases." insert:

For purposes of the preceding sentence, "state, as defined in Section 900.6 of the Government Code," and "any other entity" shall not include the Franchise Tax Board.

AMENDMENT 5

On page 6, line 4, after "forfeitures," insert:

restitution orders,

AMENDMENT 6

On page 6, line 17, strike out "and restitution orders"

AMENDMENT 6A

On page 6, line 19, strikeout "is" and insert:
are enforceable by the State Board of Control and are

AMENDMENT 7

On page 6, line 26, strike out "county or the state" and insert:
State Board of Control

AMENDMENT 8

On page 7, line 21, strike out "obligor" and insert:
debtor

AMENDMENT 9

On page 8, line 36, strike out "subdivision (e)" and insert:
subdivisions (e) and (f)

AMENDMENT 10

On page 9, line 23, after "(b)" insert:
(1)

AMENDMENT 11

On page 9, strike out lines 27 and 28, and insert:
this article.
(2) Notwithstanding paragraph (1), for the collection of restitution fines described in paragraph (2) of subdivision (a) of Section 19280, the Franchise Tax Board's administrative costs

AMENDMENT 12

On page 9, line 31, after "Control" insert:
and shall not be subject to the 15 percent limitation

AMENDMENT 13

On page 10, strike out lines 4 to 19, inclusive, and on line 20 strike out "(2) To" and insert:

fine, other than a fine described in paragraph (2) of subdivision (a) of Section 19280, or restitution order, subdivision (a) is modified to

AMENDMENT 14

On page 10, between lines 23 and 24, insert:

(f) Amounts collected by the Franchise Tax Board pursuant to referrals described in paragraph (2) of subdivision (a) of Section 19280 shall be deposited into the appropriate fund pursuant to agreement between the Franchise Tax Board and the State Board of Control.